



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/501,685

04/04/2005

Tadayoshi Shiraishi

4435

30678

7590

07/17/2009

CONNOLLY BOVE LODGE & HUTZ LLP

1875 EYE STREET, N.W.

SUITE 1100

WASHINGTON, DC 20006

EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

07/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/501,685

Applicant(s)

SHIRAISHI ET AL.

Examiner

Brent T. O'Hern

Art Unit

1794

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): all 35 USC 112 rejections.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 15-21 and 23

Claim(s) withdrawn from consideration: 1-7 and 9-14

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____

/BTO/
Brent T. O'Hern
Examiner, Art Unit: 1794

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794

Continuation of 11, does NOT place the application in condition for allowance because:

All 35 USC 112 rejections have been withdrawn due to Applicant's amendments.

In response to Applicant's arguments (See p. 7, para. 3 to p. 9, para. 3 of Applicant's Paper filed 7/8/2009.) that there is not any motivation to add ubiquinone under heating at a temperature of not lower 48 C because it would be contrary to the suggestion of Udel ('942), as Udel ('942) relates to production of soft gel capsules which are distinct from foods and separation or localization is not a problem of concern with soft gels, it is noted that independent claim 15 is not directed to just food but rather a "supplementation food" which can include soft gels.

In response to Applicant's arguments (See p. 8, para. 3 of Applicant's Paper filed 7/8/2009.) that there is not any reason to retain ubiquinone in a dissolved state because Udel ('942) teaches using wax as a suspension agent, it is noted that once the mixture cools the wax helps to provide uniformity due to its thickening properties upon cooling.

In response to Applicant's arguments regarding claim 16 (See p. 8, para. 5 to p. 9, para. 1 of Applicant's Paper filed 7/8/2009.) that the melting point of the MCT is not 20 C or higher because the MCT are obtained from fractionation of coconut oil, it is noted that coconut oil contains fat and oil fractions and fractionation is a known method of separating fats/oils by cooling into fractions of fats/oil having different melting points. Thus, it is not clear why Applicant believes the oils do not have a melting point not lower than 20 C as the fractions have different melting points.

In response to Applicant's arguments (See p. 8, para. 6 to p. 9, para. 3 of Applicant's Paper filed 7/8/2009.) that because hydrogenated cottonseed oil has a melting point of 38 C and the MCT fraction of the MCT is not hydrogenated the melting points of the MCT fraction do not change, it is firstly noted that it is not clear what point Applicant is trying to make since MCT can include fatty acid chains that are either saturated or unsaturated while having the same length and if one desired to have a uniform MCT they will hydrogenate all of the MCT to provide a composition with little to no unsaturated MCT if desired. Furthermore, un-fractionated or fractionated coconut oil can be hydrogenated with the hydrogenation being of any degree from slightly to fully with a spectrum of melting points in between.

In response to Applicant's arguments (See p. 9, para. 6 to p. 10, para. 6 of Applicant's Paper filed 7/8/2009.) that Selzer ('307) teaches away from heating ubiquinone because ubiquinone is not very stable and deteriorates at temperatures above 115 F, it is noted that this does not mean ubiquinone can not be subjected to said temperature but rather precautions should be taken when handling. The same is true for oils and many other materials. Oils are also not very stable and deteriorate at said temperatures, however, it is still routine to process oils at said temperatures while taking precautions such as operating under vacuums.

In response to Applicant's arguments (See p. 10, para. 2 of Applicant's Paper filed 7/8/2009.) that since Selzer ('307) is used for supplements it does not belong to ordinary foods one and would not look to Selzer ('307) for solving separation or localization problems, it is noted that Applicant's claims do not just relate to food but "ubiquinone supplementation". Thus, Applicant's arguments are not persuasive as Selzer ('307) and Applicant's materials are both used for supplements..

/BTO/
Brent T. O'Hern
Examiner, Art Unit: 1794